



## **Public defense reform: HB 5676**

The Campaign for Justice supports House Bill 5676, which would create the Michigan Public Defense Act.

### **Two overarching reform goals:**

- A system that meets and enforces minimum American Bar Association and State Bar of Michigan principles for public defense delivery systems.
- A system that has adequate state funding.

### **Essential components of an effective public defense system:**

- A state system, created in the judicial branch, of delivering constitutionally adequate public defense services to individuals eligible for appointed counsel at the trial and appellate levels, as well as in delinquency proceedings, including:
  - A 9-member commission to develop a plan and oversee an office of public defense, appointed by the governor after recommendations from the Michigan supreme court, Michigan judges' association, Michigan district judges' association, criminal defense attorneys association of the state, and from the general public.
  - An office of public defense staffed by trained professionals and headed by a chief public defender.
  - An appellate bureau, headed by a chief appellate defender, to oversee appellate defense functions.
  - Regional offices to oversee the local delivery of public defense services. The number and location of regions will be designated by the commission.

### **Service delivery:**

- The commission establishes the plan to deliver services. Delivery is by a mix of:
  - Public defense offices staffed by public employees.
  - Public defense offices under contract with the office of public defense (nonprofit offices, contract defense offices, county offices).
  - Assigned counsel (required to be part of each region's delivery system).

### **11 Principles:**

- Compliance with the 11 Principles of a Public Defense Delivery System is required by statute. The commission establishes policies implementing those principles.
- The office of public defense establishes procedures to implement the commission plan and policies, including: establishing oversight mechanisms, qualifying and appointing counsel, providing training and resources to attorneys providing public defense services, collecting data and preparing reports to the commission and legislature.
- The office of public defense (and its appellate bureau) appoints counsel, based on the plan established by the commission.
- The statute establishes standards for eligibility determinations and for recouping costs for legal defense services.
  - Juveniles must meet with counsel before waiving representation.

### **Funding:**

- A public defense fund is created to receive funding from all sources.
- The state is responsible for funding the system at a level that complies with its obligations under the U.S. and Michigan constitutions to ensure the right to counsel for its residents.

NOTE: The funding mechanism will be in a separate bill.

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A JUSTICE SYSTEM THAT WORKS FOR ALL



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### **Who is the Campaign for Justice coalition?**

*ACLU of Michigan  
American-Arab Anti-Discrimination Committee of Michigan  
American Civil Liberties Union  
American Friends Service Committee Criminal Justice Program  
Association for Children's Mental Health  
Brad Snavelly, Executive Director, Michigan Family Forum  
Brennan Center for Justice at New York University School of Law  
Citizens Alliance on Prisons and Public Spending - Michigan  
Citizens for Traditional Values  
Council of Islamic Organizations of Michigan  
Criminal Defense Attorneys of Michigan  
Criminal Defense Lawyers of Washtenaw County  
Crossroads Bible Institute  
Constitution Project  
Detroit Hispanic Development Corporation  
Detroit Life Challenge  
Former Michigan Gov. William Milliken  
Grand Rapids Bar Association  
Hispanic Bar Association of Michigan  
Humanity for Prisoners  
Innocence Project – Cooley Law School  
Interfaith Council for Peace and Justice  
Jewish Community Relations Council of Metropolitan Detroit  
Kalamazoo County Bar Association  
Legal Aid and Defender Association, Inc.  
Legal Services in Michigan – State Planning Body  
Macomb County Bar Association  
Metropolitan Organizing Strategy Enabling Strength (MOSES)  
Mental Health Association in Michigan*

*Michigan Association for Children with Emotional Disorders  
Michigan Board of Rabbis  
Michigan Catholic Conference  
Michigan Council of Private Investigators  
Michigan Council on Crime and Delinquency  
Michigan County Social Services Association  
Michigan Jewish Conference  
Michigan Juvenile Detention Association  
Michigan Juvenile Justice Collaborative  
Michigan League for Human Services  
Michigan Prospect  
Michigan Public Defense Task Force  
Michigan Unitarian Universalist Social Justice Network  
Michigan Women's Justice & Clemency Project  
NAACP – Michigan State Conference  
National Association of Criminal Defense Lawyers  
National Association of Legal Investigators  
National Association of Social Workers – Michigan  
National Conference of Black Lawyers - Detroit Chapter  
National Council of Jewish Women, Greater Detroit Section  
National Lawyers Guild – Detroit & Michigan Chapter  
Partners in Crisis  
Prison Fellowship  
Temple Kol Ami Social Action Committee  
The Provider Alliance  
Race Relations Council of Southwest Michigan  
Shiawassee County Bar Association  
The Specialists, Inc.  
Sugar Law Center for Economic and Social Justice  
Washtenaw County Office of Public Defender*

*The Campaign for Justice works in partnership with the State Bar of Michigan and the Governor's Office of Faith Based and Neighborhood Partnerships.*

*The Michigan Women's Commission supports the concept of public defense reform.*

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## **CAMPAIGN FOR JUSTICE PUBLIC DEFENSE SYSTEM FINANCING**

### **STATE BUDGET PERSPECTIVE:**

- The state's FY10 budget includes \$2.9 billion for Public Safety and Judiciary agencies. This represents 6.4% of the overall \$45.2 billion budget.
- The FY10 General Fund (GF) budget includes \$2.36 billion for these same agencies or 29% of the total \$8.13 billion GF budget.
- Included in the Judiciary budget is \$5.8 million for the State Appellate Defender's Office (SADO). Of that amount \$5.2 million is GF, or less than 1/10 of 1% of the state's GF budget is spent on indigent defense.

### **COUNTY BUDGET PERSPECTIVE:**

- Currently public defense costs are financed by local units of government, primarily counties.
- Typically counties finance their court costs with general fund appropriations.
- Revenues that might offset these GF court costs are deposited into the county's GF. These revenues might include court fees/fines, judicial salary reimbursements, other state grants, and Court Equity Fund payments.
- Ingham County example:
  - In FY08 the county GF spending was \$81.1 million.
  - GF spending for law enforcement was \$28.5 million or 35.2% of total GF spending.
  - GF spending for judicial functions totaled \$19.5 million or 24% of the total GF budget.
  - The county spent \$1.3 million on indigent defense or 1.6% of the county's GF budget.
  - The county received \$1.94 million in Court Equity Fund (CEF) payments from the state to help offset the costs of overall court operations.
  - The county also deposited \$6.1 million in revenues related to court functions into their GF.

### **COSTS:**

- Total costs of current system is at least \$83.5 million.
- The \$83.5 million includes the following:
  - \$67 million spent by counties for circuit and district court public defense
  - \$4.5million spent by municipal district courts for criminal public defense
  - An estimated \$4 million spent by counties for appellate defense
  - An estimated \$2 million spent by locals for expert witness fees
  - \$6 million for the State Appellate Defenders Office.
- In 2008 the National Legal Aid & Defender Association (NLADA) published an Evaluation of Trial-Level Indigent Defense Systems in Michigan that was commissioned by the Michigan legislature. The NLADA reported that Michigan would need to increase spending on indigent defense to \$120 million per year in order to reach the average national per capita spending of \$11.86.

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- Cost estimates for a statewide system will involve the following assumptions:
  - Criminal caseload estimates
  - Attorney caseloads and national standards
  - Salary and fringe costs for public defenders
  - Compensation for contract attorneys & assigned counsel
  - Regional cost differentials
- The cost of operating a public defense system will depend in no small part on how the system is designed. Ways to mitigate the cost include the following:
  - Establish a cost effective mix of public defender employees vs. contract attorneys & assigned counsel
  - Set compensation rates by regions
  - Local Public Defender offices could be non-governmental entities
  - In urban areas the local offices could examine the possibility of partnering with universities and law schools.

#### **FUNDING OPTIONS:**

- 100% state general fund (GF).
- Capture local dollars already in system and fill in the rest with GF.
- Identify a new revenue source such as an increase in court fines.
- Redirect savings from other state agencies due to implementation.
- A mix of all of the above.

#### **CAPTURE LOCAL DOLLARS ALREADY IN THE SYSTEM:**

- If the state takes over the indigent defense system the counties and municipalities will be relieved of almost \$78 million in current costs.
- Currently the local courts collect criminal and civil fees and fines as established in statute. The statutes also define the state/local split. The statutes could be amended to reallocate the splits so that the state retains a larger share. The increased share could be deposited in the public defense fund.
- In FY08 the state provided \$64 million to counties to offset the costs of operating their local trial courts. The payments come from the Court Equity Fund (CEF), which is a state administered fund that includes a mix of court fines/fees and state general fund dollars. The allocation of some or all of these funds could be changed and deposited into the public defense fund.

#### **SYSTEM PHASE –IN:**

- Due to the complexity of implementing a statewide system it could take 2-3 years to completely take over the system from the local courts.
- The phase in could begin in FY11 with the appointment of a Commission and the establishment of a central Public Defenders Office. The Commission could then establish an implementation schedule to phase in the system in FY12 and 13.